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Pursuing State Legislation to Protect Immigrants Against Immigration Fraud

The County of Los Angeles (County) is home to more immigrants than any other county in the nation. According to the U.S. Census, nearly 35% of the County's 10 million residents were born in another country. Estimates further indicate that approximately 970,000 undocumented immigrants live in the County, more than in any other county in California.

The Trump Administration's anti-immigration Federal policy agenda has caused increased numbers of undocumented immigrants to seek options to legalize their immigration status. Unfortunately, this trend has also increased opportunities for unscrupulous individuals to defraud immigrants and their families by falsely promising pathways to immigration benefits in exchange for costly fees. These individuals, who are non-attorneys or unauthorized to represent people in immigration matters, often charge thousands of dollars to unsuspecting undocumented immigrants for immigration promises they fail to keep. This is very costly to immigrants because they lose their hard-earned money and their dreams to legalize their immigration status. Instead, they

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often end up in deportation proceedings due to the actions of individuals who were supposed to have helped them. In fact, it is estimated that fraudulent consumer and legal practices cause more deportations of undocumented immigrants more than do immigration authorities.

Individuals who are neither attorneys nor approved by Federal law to offer immigration services are commonly known as *notarios*, a label that is highly deceptive. *Notario* is short for *notario público*, which translates literally to "notary public." For instance, in much of Latin America, notaries public are highly trained and specialized lawyers. In contrast, notaries public in the United States are only authorized to witness signatures and authenticate documents. But many of those who prey on immigrants use a notary public license to misrepresent their qualifications to immigrants who believe they are attorneys.

Existing state law, the California Immigration Consultants Act (ICA), defines and regulates immigration services provided by individuals who are neither licensed attorneys nor authorized by Federal law to represent people in immigration matters. The ICA defines such individuals as "immigration consultants" and, among many other things:

1. Prohibits them from providing legal advice, including telling clients whether they qualify for immigration relief, how they qualify, and what they need to do in order to qualify;
2. Requires them to be registered and file a \$100,000 bond with the California Secretary of State;

3. Requires them to provide customers with a number of consumer protection disclosures, such as a written contract in the customer's language, contact information for the immigration consultant, registration and bond information, and a statement that the immigration consultant is not an attorney and cannot therefore offer legal advice;
4. Limits the services they can provide to non-legal services, such as completing forms as instructed by customers, translating documents, and submitting documents to immigration officials on behalf of customers.

Given the complexities of immigration law, the ICA's restrictions are impractical even for well-intentioned immigration consultants. Applications and instructions for immigration benefits are available, free of charge, on the U.S. Citizenship and Immigration Services (USCIS) website. Applicants have the option of filing the forms on their own, but often seek out services for assistance in navigating the process. During the course of consultations between immigration consultants and clients, legal advice inevitably is dispensed because the clients are often unfamiliar with immigration laws and uncertain about which type of benefit, if any, they are eligible for. Therefore, immigrants who hire the services of immigration consultants are vulnerable to getting advice from immigration consultants about whether they qualify for immigration relief, how to qualify, and what they need to do to qualify – all activities prohibited by ICA.

Undocumented immigrants are especially vulnerable to the consequences of poor legal advice. Further, affected immigrant victims often lack the resources to correct the mistakes for a number of reasons. First, immigrants do not want to get entangled in legal or governmental proceedings that can further complicate their

immigration status. This is made worse by the fact that immigration consultants often threaten to report victims to immigration authorities if they complain. Second, many immigrants lack knowledge of where to seek appropriate assistance, and many also distrust government institutions due to their immigration status and personal experience with government officials in their home countries. And third, immigrants often wait several years before they convince themselves that they were defrauded due to their perception that immigration proceedings are lengthy and cumbersome. This perception is often reinforced by immigration consultants who tell their customers to keep waiting to hear about their cases. Victims oftentimes complain only years later when the immigration consultant suddenly closes his or her business and disappears with the customers' important documents.

This is particularly concerning at a time when the Trump Administration has expanded the discretion of USCIS officials to deny immigration applications, leaving no room for error in the accuracy, submission, and completeness of immigration applications. In July 2018¹, the Trump Administration introduced a new policy that provides USCIS immigration adjudicators with discretion to deny immigration applications, petitions, or requests without issuing a "Request for Evidence" or "Notice of Intent to Deny" if initial evidence is insufficient. This policy change is a departure from previous practice that allowed applicants to provide additional evidence if their application was incomplete or did not meet evidentiary requirements.

¹ U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services "Policy Memorandum: Issuance of Certain RFEs and NOIDs; Revisions to Adjudicators Field Manual (AFM) Chapter 10.5(a), Chapter 10.5 (b)" July 13, 2018. https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/AFM_10_Standards_for_RFEs_and_NOIDs_FINAL2.pdf

To compound this issue further, the Administration modified a policy in June 2018² that would put immigrants at greater risk of deportation by allowing officials to start the deportation process for denied immigration petitions and to refer cases to the Immigration and Customs Enforcement (ICE) on criminal or security grounds. The Administration began implementing this new policy on October 1, 2018 by issuing Notices to Appear (NTAs) that are then filed with immigration courts to commence removal proceedings for applicants whose petitions for permanent residence, a status adjustment, or a change in nonimmigrant status were denied. On November 19, 2018, USCIS began issuing NTAs for other denied applications including petitions for T-Nonimmigrant Status, U-Nonimmigrant status, Amerasians, widow(er)s, Special Immigrants (Violence Against Women Act and Special Immigrant Juvenile), qualifying family members of U-1 nonimmigrants, and refugee or asylee relatives. This critical change of policy, combined with USCIS's expanded discretion to deny incomplete petitions, further demonstrates the need for immigrants to have competent legal assistance when completing and filing immigration petitions.

Given the critical changes to how Federal immigration officials review and refer cases for deportation proceedings and a pervasive problem of immigration consultant fraud in Los Angeles County, it is in the interest of the County to seek changes to State law to increase consumer protections by regulating who, for compensation, may engage in the business of providing services to individuals seeking immigration relief.

² U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services "Policy Memorandum: Updated Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Deportable Aliens" June 28, 2018.
<https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2018/2018-06-28-PM-602-0050.1-Guidance-for-Referral-of-Cases-and-Issuance-of-NTA.pdf>

I, THEREFORE, MOVE that the Board of Supervisors

1. Direct the Chief Executive Officer and the County's Legislative Advocates in Sacramento, in consultation with the Office of Immigrant Affairs and County Counsel, to sponsor or support State legislation to strengthen consumer fraud protections for immigrants and their families seeking immigration services.
2. Direct the Office of Immigrant Affairs to:
 - a. Provide outreach and education throughout the County for immigrants and their families in a culturally sensitive and linguistically competent manner so they learn how to identify, prevent, and report immigration services fraud and abuse.
 - b. Consult with academic institutions and other partners to conduct surveys on immigration fraud, analyze data, publish results, and make recommendations.
 - c. Explore opportunities to support expanding the number of organizations approved by the federal government to represent individuals in immigration matters.
 - d. Provide assistance workshops for immigrants and their families who are victims of immigration services fraud.

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